

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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AUDRY MALCOLM,  
on behalf of herself and all other employees  
similarly situated,

Plaintiffs,

v.

THE EASTMAN KODAK COMPANY,

Defendant.

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**STIPULATION AND ORDER  
CONSOLIDATING CASES FOR  
SETTLEMENT PURPOSES**

Civil Actions

No. 03-CV-6589 T(P)

PETER LUCIANO AND DAVID  
WOODWARD, on behalf of  
themselves and all other  
employees similarly situated,

Plaintiffs,

v.

THE EASTMAN KODAK COMPANY,

Defendant.

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No. 04-CV-6194 CJS(F)

**WHEREAS** Audry Malcolm filed a class action lawsuit entitled *Audry Malcolm, et al. v. The Eastman Kodak Company*, Case No. 03-CV-6589 T(P), in the United States District Court for the Western District of New York on November 21, 2003 ("Action 1"); and

**WHEREAS** Peter Luciano and David Woodward filed a class action lawsuit entitled *Peter Luciano and David Woodward, et al. v. The Eastman Kodak Company*, Case No. 04-CV-6194 CJS(F), in the United States District Court for the Western District of New York on April 29, 2004 ("Action 2"); and

**WHEREAS** the Plaintiffs in both Action 1 and Action 2 allege that Defendant misclassified certain employees as exempt, thereby depriving them of overtime pay in violation of the Fair Labor Standards Act ("FLSA") and the New York Labor Law; and

**WHEREAS** Defendant has denied, and continues to deny, each and every material allegation made by Plaintiffs in both Action 1 and Action 2; and

**WHEREAS** Defendant and the Plaintiffs in both Action 1 and Action 2, on behalf of themselves and the classes they purport to represent, desire to fully and finally settle and resolve all rights, claims, causes of action, and proceedings relating to such Actions; and

**WHEREAS** this Court has, on December 23, 2005, issued and filed an Order Preliminarily Approving Settlement of Action 1 and Action 2; and

**WHEREAS** Defendant and Plaintiffs agree and stipulate that consolidating Action 1 and Action 2 for purposes of settlement only will be beneficial to the parties and will help to facilitate a final settlement of both Actions;

**IT IS HEREBY ORDERED** that *Audry Malcolm, et al. v. The Eastman Kodak Company*, Case No. 03-CV-6589 T(P) (Action 1), and *Peter Luciano and David Woodward, et al. v. The Eastman Kodak Company*, Case No. 04-CV-6194 CJS(F) (Action 2), are consolidated for settlement purposes only; and

**IT IS FURTHER ORDERED** that should the parties inform the Court that they have reached an impasse on any issue not previously agreed to, and/or final settlement of both Action 1 and Action 2 cannot be reached, the Court shall then issue an Order requiring that these matters be litigated separately without prejudice to either party.

**IT IS SO ORDERED.**

Dated: February 2, 2006

S/ MICHAEL A. TELESCA  
**HONORABLE MICHAEL TELESCA**  
**UNITED STATES DISTRICT JUDGE**

STIPULATED TO BY:

Dated: January 31, 2006

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al. & Peter Luciano, et al.

Dated: February 1, 2006

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Dated: January 31, 2006

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